

**Matter of:** Mesa, Inc.  
**File:** B-254730  
**Date:** January 10, 1994

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#### DIGEST

Protest that contracting agency improperly evaluated proposals under solicitation which sought offers for electro-optical/infrared engineering and technical support is denied where record shows that agency reasonably evaluated the proposals under each of the solicitation evaluation factors.

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#### DECISION

Mesa, Inc. protests the proposed award of a contract to OmniTech under request for proposals (RFP) No. N60921-93-R-A101, issued by the Department of the Navy, Naval Surface Warfare Center, Dahlgren Division for electro-optical/infrared (EO/IR) engineering and technical support services concerning new missile seeker developments. Mesa argues that the solicitation was amended to include requirements that unfairly favored OmniTech and that the agency unreasonably evaluated the proposals and selected OmniTech for award.

We deny the protest in part and dismiss it in part.

#### BACKGROUND

The RFP, issued as a small business set-aside, contemplated the award of a cost-plus-fixed-fee, level-of-effort contract for a base year with four 1-year options. The RFP called for an estimated total 9,000 hours of work per year in five

labor categories: senior scientist, senior electro/optical (EO) engineer, physicist/electrical engineer, EO technician, and technical writer. The contract encompasses follow-on work to a current contract held by Electronic Component Sales (ECS) with Mesa and OmniTech as subcontractors.

The RFP provided that award would be made to the offeror whose proposal, conforming to the solicitation, was determined to represent the "best value" to the government. The government reserved the right to award to the offeror with the lowest realistic cost if the proposals within the competitive range were essentially equal in technical competence. The RFP included the following evaluation factors and subfactors:

1. Technical Understanding
  - a. EO/IR laboratory facilities
  - b. Laboratory and field evaluations of IR missile seekers
  - c. EO/IR seekers for missile seeker applications
  - d. Radiometric characterization, calibration, and data reduction techniques
2. Personnel Capability
3. Corporate Experience
  - a. EO/IR missile seeker studies
  - b. EO/IR hardware evaluation
  - c. EO/IR development
4. Management Plan
  - a. Project organization
  - b. Facilities and equipment

The RFP stated that the technical understanding and personnel capability factors were of equal importance and the corporate experience factor was slightly less important than those two factors. The RFP also stated that the corporate experience factor was "slightly less than twice as important" as the management plan factor.

Offerors were also informed that proposals would be evaluated for cost realism and that proposed costs may be adjusted based upon the results of that evaluation. The resulting adjusted cost estimate was to be used in the selection decision.

Mesa and OmniTech submitted proposals.<sup>1</sup> The proposals were evaluated and, using the following maximum possible points, given the following scores:

	Maximum	Mesa	OmniTech
Technical understanding	300	231.67	276.67
Personnel capability	300	190.50	217.83
Corporate experience	250	176.67	205
Management plan	150	107.50	100
Total	1,000	706.34	799.50

The evaluators noted that while Mesa performed the work as a subcontractor under the current contract and its technical score indicated that the firm could perform this contract in a satisfactory manner, the "key person who performed 95% of the previous support is no longer with Mesa; therefore, initial expertise will not be available at time of contract award." Additionally, the agency determined that Mesa's proposed senior EO engineer, physicist/electrical engineers and EO technician did not meet all of the desired experience requirements. As to OmniTech's proposal, the evaluators noted that the firm "has a thorough understanding of the specifications and has an excellent senior staff to perform the contract." Additionally, noting that the individual who had previously worked as Mesa's senior EO engineer was the president of OmniTech, the evaluators credited OmniTech with corporate experience primarily based on that individual's work on the previous contract. The evaluators noted that although the RFP required that proposals include as "sample data" information on prior contracts to demonstrate corporate understanding and experience on the required work, OmniTech's proposal did not include this information.

Although the evaluators initially concluded that the absence of sample data from OmniTech's proposal precluded award based on that firm's initial proposal, the agency subsequently determined that discussions were not necessary. The agency reports that the information was not required since the evaluators were able to adequately assess OmniTech's corporate experience based on the resumes and other proposal information submitted and based on the fact that OmniTech's senior EO engineer had previously held that position with Mesa on the current contract.

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<sup>1</sup>OmniTech, a newly incorporated firm, was started by an individual who worked for 11 years for Mesa, including 3 years as the senior EO engineer on the current ECS contract. Once OmniTech was incorporated, OmniTech subcontracted with ECS under that contract, allowing the senior EO engineer to continue in that position.

Mesa proposed a total cost-plus-fixed fee of \$2,727,621 while OmniTech proposed a total cost-plus-fixed fee of \$2,422,505. As a result of the agency's cost realism evaluation, the agency estimated Mesa's cost-plus-fixed-fee to be \$2,739,311 and OmniTech's to be \$2,453,485. Based on the evaluation and the fact that the agency believed that discussions would not change the offerors' competitive standing, the agency determined that OmniTech's proposal was the best value to the government. Award has been withheld pending a decision on this protest.

## ANALYSIS

### Untimely Issues

Mesa first argues that the Navy amended the RFP "to provide such an unfair competitive advantage to the awardee that only one business could meet all of the requirements of the [s]tatement of [w]ork." For example, Mesa notes that the RFP, which initially had required that the senior EO engineer have an "intimate understanding of the mid-IR seekers," was amended to require "intimate understanding of the mid-IR seekers, including the MHIP [missile homing improvement program] seeker." According to Mesa, this change, in addition to an amended requirement for experience with specific equipment models, favored OmniTech since Mesa's former senior EO engineer now works for OmniTech. Mesa also argues that the agency loosened certain RFP requirements to favor OmniTech. For example, Mesa notes that the agency reduced the number of resumes required in proposals for the senior EO engineer and the EO technician positions, changed the security clearance requirements for the contract, and reduced the experience required for the senior scientist and the technical writer labor categories.

These contentions are untimely. Although the agency changed these requirements in the RFP amendments which were issued prior to the April 28 closing date for receipt of proposals, Mesa waited to protest these changes until September 1, after it was notified of the agency's intent to award to OmniTech. Protests challenging alleged improprieties incorporated into a solicitation must be filed prior to the next closing date for receipt of proposals following the incorporation. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993). Since Mesa failed to raise these contentions in a timely manner, this portion of its protest is dismissed.<sup>2</sup>

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<sup>2</sup>Mesa also complains that the agency extended the closing date for receipt of initial proposals in order to benefit the proposed awardee. This allegation also is untimely  
(continued...)

## The Evaluation and Selection

Mesa also challenges the evaluation of the Mesa and the OmniTech proposals under each of the evaluation factors and the selection of OmniTech. First, Mesa contends that the agency unfairly downgraded its proposal by placing an unreasonable emphasis on MHIP seeker experience and knowledge, which the protester argues was never specifically referenced in the RFP. Next, Mesa complains that the agency improperly evaluated Mesa's proposed personnel under the personnel capability evaluation factor and that the agency improperly evaluated OmniTech's corporate experience. Mesa also contends that while OmniTech's cost "appears to be a better value," because OmniTech is a new firm, OmniTech has "underestimated the expenses of supporting this contract." In summary, Mesa argues that if the technical and cost evaluations had been properly conducted, Mesa's proposal would have been considered superior to OmniTech's proposal and Mesa would have received the award.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Management Tech. Servs., B-250834, Feb. 22, 1993, 93-1 CPD ¶ 304. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; instead, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Id. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Robert Slye Elecs., Inc., B-243272, July 5, 1991, 91-2 CPD ¶ 28.

As we explain in detail below, based on our review of the record, including the proposals, the evaluation documents and the submissions of the parties, we conclude that, with two exceptions, the evaluation was consistent with the RFP's stated evaluation criteria. Although the Navy concedes that it erroneously evaluated and scored Mesa's proposed EO technician under the personnel capability evaluation factor, and we find that the agency erroneously scored Mesa's proposed technical writer under the same factor, as we explain below, these errors had no impact on the selection decision. Under the circumstances, considering OmniTech's higher-rated and lower-cost proposal, we conclude that there is no basis for reversing the selection decision.

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<sup>2</sup>(...continued)

since it was not raised until after the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

## Technical Understanding

Under the technical understanding evaluation factor, the agency evaluators concluded that Mesa's proposal demonstrated an understanding of EO/IR systems and related topics. Nonetheless, the evaluators also stated that experience with the MHIP "represents approximately 99% of the requirements of the solicitation" and Mesa's experience with the MHIP "was traced to one key person" who was no longer employed by Mesa. The evaluators also concluded that the MHIP experience that Mesa currently possesses is "in the office where analysis and data reduction was performed as opposed to actual performance in the laboratory and field experiments." While generally the agency credited Mesa with relevant knowledge and experience, under each subfactor the evaluators noted that Mesa lacks MHIP knowledge and experience. For example, under the EO/IR laboratory facilities subfactor, the evaluators noted that "the majority of Mesa's experience appears to be general knowledge and not MHIP specific. Further, much of the relevant laboratory and radiometric work was performed by one person who is no longer employed by Mesa." Similarly, under the radiometric characterization, calibration, and data reduction technique subfactor, the agency noted that "current MHIP knowledge is lacking in the proposed personnel."

In response, the protester states that neither the statement of work (SOW) nor the technical understanding evaluation factor emphasize MHIP experience to the degree that it was emphasized in the evaluation. Mesa states that it prepared its proposal based on the SOW and that nowhere in the SOW is there a specific or exclusive reference to MHIP work. The protester argues that the agency "did not explicitly evaluate" the SOW and did not evaluate Mesa's technical understanding based on the information presented in Mesa's proposal, "but rather on the availability of one individual." Mesa also argues that its work as a subcontractor under the current contract demonstrates that the agency has overemphasized MHIP-specific work since numerous tasks which it performed did not concern MHIP. According to Mesa, under that subcontract, approximately 50 percent of the hours worked by Mesa's former senior EO engineer were not MHIP-specific and that individual was only one contributor to Mesa's efforts under the subcontract.

We conclude that Mesa knew or should have known, based on the solicitation, that the agency would emphasize experience and knowledge concerning the MHIP seeker. Under the technical understanding evaluation factor, the RFP specifically instructed offerors to outline their knowledge/experience with the MHIP seeker. Specifically, the RFP states that technical understanding "will be evaluated for

relevancy and adequacy in terms of the technical, analytical, and engineering knowledge and abilities in the area of IR missile seekers, particularly the . . . MHIP seeker." Moreover, the record shows that Mesa was aware of the agency's emphasis on MHIP seeker experience. In an April 12 letter to the agency, referring to a solicitation amendment which reiterated the agency's desire for MHIP experience, Mesa complained that "with the additional requirements for specific MHIP seeker experience . . . only one non-government person in the world can meet all the requirements" of the RFP. It is disingenuous of Mesa to now argue that the MHIP seeker emphasis was unclear.

Aside from its concern about the overemphasis on MHIP experience, Mesa also argues that the evaluators overemphasized the absence of a single individual from the firm and failed to give Mesa credit for experience and in-depth understanding of all tasks set forth in the SOW. We do not agree. Our review of the record shows that the evaluators consistently credited Mesa with experience and understanding generally under the technical understanding factor and specifically under each of the subfactors. For example, the evaluators concluded that Mesa's "proposal demonstrated that the offeror has extensive experience in the use, setup, and operations of laboratory facilities and can be considered a leader in this area," and assigned Mesa a score of 76.67 out of the 100 possible points available under the EO/IR laboratory facility subfactor. Although Mesa believes that it should have received greater credit under the technical understanding factor, essentially, Mesa is simply disagreeing with the agency's evaluation and scoring. The protester's disagreement with the evaluation does not establish that the evaluation was unreasonable.  
Id.<sup>3</sup>

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<sup>3</sup>Mesa also complains that the evaluators did not give Mesa credit for having as a consultant a scientist who "designed and built the IR TOAST [Infrared Target for Optically Activated Seekers and Trackers] simulator . . . and was involved in the initial studies for an IR variant for the Standard Missile." Although Mesa's proposal states that this consultant and others would be available to support its efforts on an "as-needed basis," Mesa did not propose this consultant as a staff member under this RFP and did not submit his resume. In our view, since Mesa did not commit the consultant to work on the contract, the evaluators' determination not to credit Mesa for this consultant was reasonable. To the extent Mesa argues that it was precluded from submitting a resume for this consultant by the RFP's restriction on the number of resumes that would be considered, this issue is untimely. 4 C.F.R. § 21.2(a)(1).

## Personnel Capability

Mesa next argues that the agency improperly evaluated the skills and experience of nearly all of its proposed personnel. We have reviewed the evaluation record and Mesa's proposal, including the resumes submitted with the proposal, and we conclude that, with two exceptions, the evaluation under the personnel capability factor was consistent with the RFP.

Concerning the senior scientist labor category, the agency assigned 72 of 80 possible points for the individual proposed by Mesa for this position. While the evaluators noted that the proposed individual exceeded "all desired requirements," in the single criticism listed for this position, the evaluators stated that the proposed senior scientist "is also the [chief executive officer] of the company and could possibly create a time constraint and accessibility problems."

Mesa claims that the fact that its proposed senior scientist is the firm's chief executive officer (CEO) provides no basis for downgrading its proposal due to possible time constraints and accessibility problems. In addition, Mesa argues that the "same criteria should apply to OmniTech."

Although Mesa maintains that its CEO is "able to support many different contract efforts" because the firm has an experienced, mature administrative staff, we do not think that the evaluators' concerns were unreasonable. A CEO has responsibilities that extend beyond administrative duties and we think the evaluators could reasonably conclude that conflicts may arise between those responsibilities and the duties of the senior scientist on this contract. In addition, the record shows that, in fact, a similar criticism was applied to OmniTech's proposal. OmniTech's proposal was assigned 61 out of 80 possible points for the two individuals proposed for the senior scientist category. One of the criticisms listed by the evaluators under this labor category was that "[t]he use of these individuals for this labor category could present delays and communication problems during contract performance."

Concerning the senior EO engineer and the physicist/electrical engineer labor categories, the evaluators downgraded Mesa's proposal because the individuals proposed for these positions did not have experience with IR TOAST and the MHIP, which the RFP called for, and with specific equipment to be used under the contract, such as a Bomem Model MB155 spectral radiometer and a Mitsubishi M500 thermal imager.



Generally, Mesa does not dispute that its proposed personnel lack specific experience with IR TOAST and the MHIP, and lack experience with specific equipment models listed in the RFP. Rather, as explained above, Mesa challenges the specific experience requirement and argues that its personnel have experience with similar hardware and equipment.

As we explained above, Mesa's challenge of the specific experience requirements set forth in the RFP is untimely. Further, since the RFP stated that proposed personnel "should" have such specific experience, there is no basis to challenge the agency's downgrading Mesa's proposed personnel for lacking that experience. See Diemaco, Inc., B-246065, Oct. 31, 1991, 91-2 CPD ¶ 414 (evaluation of offers must be in accordance with the solicitation's evaluation provisions).

Finally, the agency concedes that it improperly downgraded Mesa's proposed EO technician 15 points for not possessing the desired educational degree or having experience with the MHIP seeker. Additionally, our review of the record shows that the agency incorrectly downgraded Mesa's proposed technical writer 2.67 points based on the conclusion that she lacked MHIP experience. We conclude, however, that these errors had little impact on the evaluation. As explained above, Mesa received an evaluation score of 706.34 while OmniTech's score was 799.50. With the additional 17.67 points that Mesa should have received for its EO technician and its technical writer under the personnel capability factor, OmniTech's score is still 75.49 points higher. Where a minor error is discovered in the evaluation record, and where such error--even when viewed in the most favorable light for the protester--does not render the evaluation unreasonable, we will not disturb the agency's award decision. See Inner Harbor West Joint Venture, B-249945.3, Mar. 11, 1993, 93-1 CPD ¶ 232. Under the circumstances, we conclude that the evaluation of Mesa's proposal under the personnel capability factor was reasonable.

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<sup>4</sup>Mesa also alleges that the agency improperly evaluated OmniTech's proposal, which earned higher scores than Mesa's proposal for personnel capability, since, according to Mesa, only one of the six persons proposed by OmniTech has 3 years experience with the MHIP seeker, as desired by the RFP, and only one of these six is a full-time OmniTech employee. The record shows, however, that OmniTech proposed the only individual with 3 years of the MHIP experience sought by the agency and that the agency deducted points from OmniTech's proposal, as it did for Mesa's proposal, for the personnel who lacked the desired experience.

## Corporate Experience

Mesa argues that OmniTech had only 1 month's corporate experience by the time it submitted its proposal, and therefore, OmniTech's corporate experience score, which is slightly higher than Mesa's score, must be improper. The protester also asserts that the Navy improperly credited OmniTech with the personal experience of OmniTech's president while he worked as an employee of Mesa. According to Mesa, the evaluation of corporate experience should have been limited to the verifiable experience of the corporate entity itself. Additionally, Mesa states that the agency never evaluated the sample data package required by the solicitation to demonstrate relevant corporate experience.

An agency may properly evaluate the corporate experience of a new business with reference to the experience of its principal officers. See Aumann, Inc., B-251585.2; B-251585.3, May 28, 1993, 93-1 CPD ¶ 423; Talon Corp. B-248086, July 27, 1992, 92-2 CPD ¶ 55. Although the parties dispute the amount of work done by OmniTech's president, the record shows that this individual worked for Mesa for 11 years and performed the majority of the work for Mesa under the current contract, including substantial work which concerned the MHIP. The evaluators also noted that OmniTech has worked for 6 months as a subcontractor for ECS on the current contract. Based largely upon the work history of OmniTech's president on the current contract, the evaluators credited OmniTech with relevant corporate experience. We think the agency's evaluation was reasonable and consistent with the evaluation criteria.

As to the sample data required to show corporate understanding, although this information was missing from OmniTech's proposal, it was referenced in OmniTech's proposal. In addition, the agency already had the referenced sample data. Indeed, since OmniTech's senior EO engineer had previously worked for Mesa, the data referenced by OmniTech in its proposal was largely the same as the sample data submitted by Mesa, particularly as far as MHIP work is concerned. Therefore, we agree that, as the agency states, separate submission of this data by OmniTech would have had little, if any, effect on its technical score.

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<sup>5</sup>Although Mesa complains that the agency never verified OmniTech's work under the current contract, the record shows that the agency contacted officials of ECS to verify the proposed awardee's work.

## Management Plan

Under the management plan evaluation factor, Mesa's proposal was assigned 107 points and OmniTech's proposal was assigned 100 points out of a possible 150 points. Mesa's primary criticism of the evaluation under this factor is that OmniTech's CEO had no management responsibilities during his employment with Mesa and, therefore, OmniTech's score on this factor is improper. OmniTech rebuts this, stating that OmniTech's president was a manager on two recent projects while he was still working for Mesa.

Under this factor, the RFP called for the evaluation of the offeror's management plan for adequacy and relevancy of the offeror's project organization and facilities and equipment. The RFP instructed offerors to describe their plans to manage the work assigned within the organization, showing proposed project organization and quality assurance and accounting components. In addition, offerors were to describe the facilities in which the work would be accomplished, including word processing, reproduction capability, storage areas for classified documents, areas for conferences, technical library, and computer hardware and software related equipment.

Thus, although Mesa focuses on the project management experience of OmniTech's CEO, as explained, the evaluation under this factor was concerned with all aspects of offerors' management plans, including plans for work assignments, quality assurance, accounting, facilities, and equipment. Under the circumstances, Mesa's argument that OmniTech's CEO lacks management experience provides no grounds for challenging the reasonableness of the score assigned to OmniTech under this factor.

## Cost Realism

The protester argues that because OmniTech is a new business it may have "bid much lower indirect rates than mature companies because [it did] not anticipate the extent of indirect support (fringe costs, administrative support, etc.) needed to reasonably support contracts such as this one."

An agency cost analyst performed an audit of each contractor's proposal, including direct labor rates, overhead, other direct costs, and general and administrative (G&A) costs. The analyst recommended a higher G&A rate than that proposed by OmniTech and this higher rate was used to develop the government's estimate of OmniTech's cost. Even with this higher rate, OmniTech's evaluated cost is lower than Mesa's evaluated cost. Although Mesa generally argues that a new business like OmniTech cannot control costs as

well as an established firm, Mesa has pointed to nothing in the record that shows that the Navy failed to evaluate OmniTech's proposed costs reasonably and consistently with the RFP.

#### CONCLUSION

As explained, with two exceptions that had no impact on the conclusion that OmniTech's proposal was technically superior to Mesa's proposal, the agency evaluated the proposals consistently with the RFP evaluation scheme. Under the circumstances, and since OmniTech's evaluated cost was lower than Mesa's, we see no basis to object to the decision to award to OmniTech.

The protest is denied in part and dismissed in part.

Robert P. Murphy  
Acting General Counsel